


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.
05 AUG 25 PM 2: 09

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

JERRY L. BILLINGSLEY,

Plaintiff,

v.

No. 02-2920 B

SHELBY COUNTY DEPARTMENT
OF CORRECTION, et al.,

Defendants.

ORDER OVERRULING OBJECTIONS OF THE PLAINTIFF AND
AFFIRMING THE ORDER OF THE MAGISTRATE JUDGE ON
PLAINTIFF'S REQUEST FOR SUBPOENAS

On April 29, 2005, the pro se Plaintiff, Jerry L. Billingsley, moved for the issuance of subpoenas for 32 witnesses to appear at the trial of this matter. The motion was referred to the magistrate judge, who on May 24, 2005 entered an order granting the motion in part and denying the remainder. The Plaintiff objected to the magistrate judge's denial of his subpoena request as to one of the potential witnesses, Charles Fisher. According to the documents filed in this case, Fisher is a Court-appointed special master assigned to investigate the status of the Shelby County Jail and make a report to the Court regarding his findings.¹ Billingsley argued that Fisher could offer testimony as to matters that jail officials failed to correct pursuant to Court order and which, if corrected, would have prevented the assault that is the basis for the instant lawsuit. In her order, Magistrate Judge Diane Vescovo ruled that Billingsley had failed to establish how Fisher's testimony would be relevant to this case.

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¹The appointment was made in a case unrelated to that at bar.

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In his objections, the Plaintiff contends that Fisher's testimony is necessary to show that conditions at the jail were below constitutional standards. He further avers that he spoke with Fisher concerning the lack of cellmate supervision, incorrect detention procedures and poor administration, all of which contributed to his alleged injuries. The Defendants insist that there is no proof any discussion between Fisher and Billingsley actually occurred and, even if it did, that any testimony Fisher could offer would be relevant. According to the Defendants, Fisher reported that Shelby County had developed a remedial scheme resulting in improved conditions at the jail. That scheme included components that greatly reduced gang activity at the facility. The Defendants point out that the report did not contain information concerning individual inmates but, rather, focused on problems from an overall perspective.

Rule 602 of the Federal Rules of Evidence provides that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." As there is nothing to suggest that Fisher possesses such personal knowledge, and upon a review of the relevant pleadings, the Court cannot find that the magistrate judge's decision was either clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a). Thus, the Plaintiff's objections are OVERRULED and the magistrate judge's order is AFFIRMED.

IT IS SO ORDERED this 25th day of August, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



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Honorable J. Breen
US DISTRICT COURT